IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 16955 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MULTIMEDIA FRONTIERS LTD.

Versus

UNION OF INDIA

Appearance:

1. Special Civil Application No. 16955 of 2003
MR PARESH M DAVE for Petitioner No. 1-2
MR DN PATEL for Respondent No. 1
..... for Respondent No. 2-4

CORAM : HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE A.M.KAPADIA

Date of decision: 10/02/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE M.S.SHAH)

Rule. Mr DN Patel, learned Senior Standing Counsel for the Central Government waives service of Rule.

In the facts and circumstances of the case, the petition is taken up for final disposal.

2. What is challenged in this petition under Article 226 of the Constitution is the order dated 10.7.2003 passed by the Customs Excise & Service Tax Appellate Tribunal at Mumbai partly allowing the petitioner's appeals against the order of the Commissioner (Appeals), Central Excise, Ahmedabad by which the Commissioner (Appeals) required the petitioner to deposit certain amounts in two appeals as a pre-deposit for the condition for hearing the appeals on merits. Since the petitioner failed to comply with those conditions, by order dated 17.2.2003 the Commissioner (Appeals) dismissed the appeals and the Tribunal has partly allowed the petitioner's appeals by requiring the petitioner to deposit duty of Rs.6 lakhs out of total duty of Rs.19.4 lakhs and subject to the said condition being complied with the matter is ordered to be remanded to the Commissioner (Appeals) for disposal on merits. In the event of failure to deposit the amount, the appeals before the Tribunal are to stand dismissed.

Over and above the challenge to the said order of the Tribunal, the petitioner is also challenging order dated 21.8.2003 passed by the Commissioner (Appeals) by which the petitioner is required to make a pre-deposit of Rs.3 lakhs against the duty demanded of Rs.3,35,187/- and penalty of Rs.5 lakhs. In view of non-compliance with the said order of pre-deposit, the third appeal has also been dismissed. In short, the Commissioner (Appeals) has dismissed three appeals filed by the petitioner being Appeal Nos.3/Ahd-II/2002, 4/Ahd-II/2002 and also 169/Ahd-II/2002 on the ground of non-compliance with the orders for pre-deposit.

3. In view of the order that we propose to pass it is not necessary to set out the controversy in detail or to deal with the contentions sought to be urged by the learned counsel for the petitioner on merits.

4. Without expressing any opinion on the merits of the controversy between the parties, having prima-facie considered the provisions of the Explanation to Rule 6 of the Central Excise Valuation (Determination of Price of

Excisable Goods) Rules, 2000, in the facts and circumstances of the case, we are of the view that the interests of justice would be served if the Commissioner (Appeals) is directed to hear and decide all the three appeals being Appeal Nos. 3/Ahd-II/2002, 4/Ahd-II/2002 and 169/Ahd-II/2002 on merits subject to the condition that the petitioner deposits a sum of Rs.2 lakhs against the duty and penalty demanded in the three Orders-in-Original giving rise to the above numbered three appeals. It is directed accordingly.

The amount shall be deposited with the department within two months from today. After the amount is deposited, the Commissioner (Appeals) shall hear and decide the appeals on merits. In case the amount is not so deposited, this petition shall stand dismissed.

5. The petition is accordingly allowed subject to the aforesaid condition and in terms of the aforesaid directions.

Rule is made absolute with no order as to costs.

(M.S. SHAH, J.)

(A.M.KAPADIA, J.)

zgs/-